

# **EXHIBIT 13**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION  
SANDRA GLOWACKI, on behalf of her  
minor children, D.K.G and D.C.G.,

Plaintiffs,  
CASE NO. 11-cv-154891  
vs

HOWELL PUBLIC SCHOOL DISTRICT,  
JOHNSON "JAY" McDOWELL, individually  
and in his official capacity as a teacher  
in the Howell Public School District,

Defendants.

The Deposition of DANIEL GUERNSEY, taken before me,  
Jennifer Wall, CSR-4183, a Notary Public within and for the  
County of Oakland, Acting in Washtenaw, State of Michigan, at  
24 Frank Lloyd Wright Drive, Ann Arbor, Michigan on Friday,  
October 12, 2012.

APPEARANCES:

ERIN ELIZABETH MERSINO, ESQ.  
The Thomas More Law Center  
24 Frank Lloyd Wright Drive  
Ann Arbor, Michigan 48106  
(734) 827-2001

Appearing on behalf of Plaintiff.

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1 Ann Arbor, Michigan  
2 Friday, October 12, 2012  
3 10:10 a.m.  
4

5 DANIEL GUERNSEY

6 was thereupon called as a witness herein, and after having been  
7 first duly sworn to tell the truth, the whole truth and nothing  
8 but the truth, was examined and testified as follows:

9 MR. HENLEY: The record should reflect that  
10 this is the discovery only deposition of Dr. Daniel Guernsey  
11 to be taken for that purpose under the Federal Rules of  
12 Civil Procedure and noticed by co-defendant, Jay McDowell.

13 Dr. Guernsey, my name is Roy Henley,  
14 and I represent the Howell Public Schools in this case.  
15 I will be starting the questioning with you.

16 EXAMINATION

17 BY MR. HENLEY:

18 Q. Have you ever had your deposition taken before?  
19 A. Yes.  
20 Q. Okay. So you know to hopefully answer verbally as opposed  
21 to a nod or a shake of the head or an uh-huh or an uh-unh.  
22 Everyone forgets, I will remind you.  
23 A. Yes.  
24 Q. Additionally, if I ask a question that you don't understand  
25 or if that is just plain unintelligible, please let me know

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1 APPEARANCES, CONTINUING:

2 SUZANNE P. BARTOS, ESQ.  
3 Plunkett Cooney  
4 535 Griswold, Suite 2400  
Detroit, Michigan 48226  
5 (313) 983-4741

6 Appear on behalf of Defendant McDowell.

7 ROY H. HENLEY, ESQ.

8 Thrun Law Firm, PC  
9 2900 West Road, Suite 400  
East Lansing, Michigan 48826  
10 (517) 484-8000

11 Appear on behalf of Howell Public Schools.

12 ALSO PRESENT: Sandra Glowacki

13 Drake Glowacki  
14 Cassandra Harmon-Higgins

15 W I T N E S S I N D E X

16 Witness Examined by Page

17 DANIEL GUERNSEY Mr. Henley 3

18 Ms. Bartos 54

19 E X H I B I T I N D E X

20 Exhibit No. Description Page

21 Ex. No. 38 Report 4

22 \*Ex. No. 39 Document 52

23 \*(retained by counsel)

24 \* \* \* \* \*

1 and I will rephrase it so you do understand.

2 Also if you'd like to take a break at any  
3 time, I'm all in favor of breaks, please just let me  
4 know and I'd only ask that we clear up questions that  
5 are pending before we take a break, okay.

6 To start with, could you state your name for  
7 the record, please, and spell your last name.

8 A. Daniel Patrick Guernsey, G-u-e-r-n-s-e-y.

9 MR. HENLEY: Just to make things go faster  
10 I should probably should have done this, but let's mark this  
11 as Exhibit No. 38.

12 (Deposition Exhibit No. 38, report, was marked  
13 for identification.)

14 MR. HENLEY: Back on the record.

15 BY MR. HENLEY:

16 Q. Dr. Guernsey, let me hand you what's been marked as  
17 Exhibit 38, and that is your report, correct?

18 A. Yes.

19 Q. And let's move back to Exhibit A of your report. That is  
20 your curriculum vitae?

21 A. Yes, sir.

22 Q. Is there anything in your curriculum vitae which is  
23 inaccurate or not up-to-date?

24 A. Not that I'm aware of.

25 Q. I'd like to start and talk a little bit about your

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1       October 25th written reprimand. I think there were two.

2       Q. Yes. The shorter one I think is the -- assuming -- well,  
3       strike that.

4              Let me do things in better form.

5              Assuming that the shorter reprimand was the  
6       reprimand that remained effective, would you have any  
7       criticism in that regard?

8       A. Yes.

9       Q. What would that be?

10      A. It's inadequate, especially when compared with the reprimand  
11       of October 25th by Moran and Moore, that, in my estimation,  
12       is a more appropriate articulation of the severity of what  
13       happened in that classroom towards the denial of Daniel's  
14       rights.

15      Q. Were you aware that any disciplinary references were removed  
16       from Daniel's record?

17      A. Yes.

18      Q. In what way do you consider the latter reprimand, the short  
19       one, to be inadequate?

20      A. Mr. McDowell was guilty of unprofessional, unethical conduct  
21       which deprived the student of his rights. His behavior in  
22       the classroom, as I articulated in my report, was grossly  
23       inadequate, and unfair and created a hostile environment,  
24       not just for Daniel, but for the other student as they  
25       articulated in their response to the incidents.

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1       Q. As head master at Donahue Academy, you have had experience  
2       with disciplining teachers, correct?

3       A. Indeed.

4       Q. And would it be fair to say that the purpose of teacher  
5       discipline is to correct a problem, or one of the primary  
6       purposes?

7       A. Yes.

8       Q. Did you review any personnel documents related to  
9       Mr. McDowell?

10      A. No.

11      Q. Do you know whether or not Mr. McDowell had any disciplinary  
12       history before this incident?

13      A. No.

14      Q. Do you know whether he had any disciplinary history after  
15       this incident?

16      A. Other than what was in the exhibits, no.

17      Q. Did you have an opportunity to review the teachers'  
18       collective bargaining agreement?

19      A. No.

20      Q. Are you familiar at all with the Michigan Teachers Tenure  
21       Act?

22      A. Not substantially, no. Not enough to form an opinion.

23      Q. In Catholic schools, in your experience, in private and  
24       parochial education, do the boards of such schools typically  
25       issue policies?

1       A. Yes.

2       Q. Do some of those policies relate to classroom management?

3       A. Classroom management is usually handled by the principal.  
4              The board approves policies, so insofar as the board creates  
5       or approves a policy related to classroom management, such  
6       as there will be no corporal punishment, in that sense, yes,  
7       the board would be involved.

8       Q. At the Donahue academy, focusing the question a bit more,  
9       has the board passed any policies which are applicable to  
10       the classroom?

11      A. The board approves the handbook which lists standards and  
12       expectations for student behavior including in the  
13       classroom, yes. The board is aware of that and approves it.

14      Q. And as head master at Donahue academy, do you expect your  
15       teachers to be familiar with the handbook and those  
16       standards?

17      A. Absolutely.

18      Q. You had mentioned that you had reviewed a number of school  
19       district policies and guidelines, correct?

20      A. The ones that I mentioned in the exhibits, yes.

21      Q. Did you have any criticism of any of those policies and  
22       guidelines?

23      A. No.

24      Q. Did you review any materials generated by Dr. Marcia McEvoy?  
25      A. I briefly looked at some of her presentations, yes.

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- 1 that in page 13 of your opinion about ten lines from the  
 2 bottom.
- 3 A. Can you repeat the question, please.
- 4 Q. My question to you is, did you believe that he intended on  
 5 posting or having a discussion about the homosexual  
 6 experience in economics class?
- 7 A. He -- from my understanding of the depositions, he was  
 8 intending to discuss bullying and its correlation with  
 9 homosexual students.
- 10 Q. Okay. Do you believe Dan's statement about -- again  
 11 paraphrasing, how come she, meaning that female student,  
 12 doesn't have a right to wear the confederate flag belt  
 13 buckle, but gays can fly the rainbow flag.  
 14       What does that have to do with gay marriage?  
 15 A. The teacher provoked the conversation on expression, and the  
 16 student asked an on-point question about the expression of  
 17 one's personal beliefs, religiously held beliefs.
- 18 Q. That statement about, you know, flying the rainbow flag,  
 19 does that mean, how come gays should have a right to marry?  
 20 A. The rainbow flag is culturally emblematic of a gay movement,  
 21 part of which pushes the notion that homosexuals have a  
 22 right to marry. That's part of the gay movement. That's  
 23 part of what that flag symbolizes.
- 24 Q. So if I'm understanding you correctly, Mr. McDowell should  
 25 have understood that Dan was really saying, in his own

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- 1 attempted to express his belief in public and got shut  
 2 down.
- 3 Q. Okay. I cut you off, I didn't give you time to answer my  
 4 earlier question.  
 5       So is it what you're saying that Mr. McDowell  
 6 should have read between the lines that Dan was  
 7 actually saying, how come she can't wear her  
 8 confederate flag, but gays can marry?
- 9 A. The larger question I think Dan was getting to was one of  
 10 free speech.
- 11 Q. Can you answer my question. Is that what Mr. McDowell  
 12 should have heard?
- 13 A. Mr. McDowell's responsibility is to ask professionally  
 14 probing questions to find out what the students are  
 15 attempting to learn or understand. He needs to understand,  
 16 what do they know, what do they need to know. All he had to  
 17 do was ask the same question you asked, and he didn't.
- 18 Q. My question to you though -- okay, he didn't ask the  
 19 question. But should he have heard Dan say, why can't she  
 20 wear her confederate belt buckle, but gays can marry?  
 21       Is that what he should have heard from Dan in  
 22 his fumbling way?
- 23 A. I don't know how to answer your question.
- 24 Q. Without a follow-up question of what do you mean by that,  
 25 Dan, was it proper for Mr. McDowell to attempt to explain

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- 1 fumbling way, well, how come she can't wear her confederate  
 2 flag, but gays can marry?  
 3       MS. MERSINO: Objection. That is a  
 4 misstatement of what the testimony has been.  
 5 BY MS. BARTOS:  
 6 Q. You may answer. Is that what you're saying? Because you're  
 7 relating everything back to marriage, and what is the  
 8 question of why can they fly a rainbow flag have to do with  
 9 gay marriage?  
 10 A. I think Daniel's -- the Catholic concern with homosexuality  
 11 is clear. The church teaches that it is wrong to bully or  
 12 to abuse homosexual persons. It teaches that in, I believe,  
 13 it is the catechism probably about 2,359 paragraph, where it  
 14 says clearly one cannot bully or abuse homosexuals, they  
 15 have dignity.  
 16       But the church also clearly teaches that  
 17 human sexuality is only to be expressed between a man  
 18 and a woman.

19       If Daniel was interpreting the homosexual  
 20 movement right, as saying that it's okay for human  
 21 sexuality to be expressed outside of the bonds of man  
 22 and woman, then he would be right to say, how come  
 23 people can't express their beliefs in public. And  
 24 Dan's question was, can I express my belief in public,  
 25 or he didn't say that in particular, but he did it, he

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- 1 the origin of the rainbow flag and how it actually started  
 2 with Jessie Jackson?
- 3 A. Assuming that the district and the school approved and was  
 4 in support of Mr. McDowell cancelling a section of his  
 5 economics course to engage in that discussion, under that  
 6 assumption, then, yes, that question was asked about freedom  
 7 of expression. That is an interesting topic to be explored.
- 8 Q. Was it appropriate for Mr. McDowell to explain, as he saw  
 9 the difference between the confederate flag being one of  
 10 oppression and the rainbow flag being one of, you know,  
 11 acceptance?  
 12 A. I think he was --  
 13 Q. Was he appropriate in responding --  
 14 A. He was attempting to address the student question. I think  
 15 he did poorly, but he was attempting to address a topic  
 16 raised -- a legitimate topic raised by the student.  
 17 Q. Okay.  
 18 A. Provoked by the teacher.  
 19 Q. Did Mr. McDowell violate -- well, off the record for a  
 20 second.  
 21       (A pause was had in the proceedings.)  
 22       MS. BARTOS: Back on.  
 23 BY MS. BARTOS:  
 24 Q. Did Mr. McDowell violate Adam's constitutional rights when  
 25 he kicked Adam out of the class?

15 (Pages 57 to 60)

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1 A. I don't recall there being enough information in what I saw  
 2 to make a definite judgment on that.  
 3 Q. Well, Adam said, also said, "I don't accept gays". And  
 4 Mr. McDowell did not follow-up with further questioning, as  
 5 to ask him to explain what he meant. He just kicked him out  
 6 of class.  
 7 Is that a violation of his constitutional  
 8 rights?  
 9 A. It could have been.  
 10 Q. Was that based upon religion?  
 11 A. It could have been.  
 12 Q. And how would it be based upon religion by the statement of,  
 13 "I don't accept gays"?  
 14 A. The question is, what do you mean when you say, you don't  
 15 accept gays. If by saying, "I don't accept gays" means I  
 16 don't accept homosexual activity, the answer is, that is a  
 17 correct statement of religious faith of a broad swath of  
 18 humanity and that speech cannot be exiled from the  
 19 classroom.  
 20 If it's specific to, I do not approve, I do  
 21 not accept sexual activity between same sex partners or  
 22 any activity outside of marriage, that has to be  
 23 protected, that cannot be removed form the public  
 24 square.  
 25 Q. I understand. But the statement, "I don't accept gays",

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1 If that's what one means by accept, but  
 2 clearly in Daniel's deposition that's not what I meant  
 3 by "I don't accept gays". He has never bullied a gay,  
 4 he is against gay bullying, he is against bullying in  
 5 general. He says it, and yet this guy got kicked out  
 6 of class because the teacher, in my estimation, is  
 7 acting like a bully.  
 8 Q. And your opinion to my question is based not just on the  
 9 statement, "I don't accept gays, blacks, Jews", whatever the  
 10 case, but what that person meant by that statement?  
 11 A. Right, because if they're saying, I don't accept homosexual  
 12 behavior as being moral, that is a legitimate faith claim  
 13 that the student needs to be able to express in public.  
 14 If he's saying, "I don't accept homosexuals  
 15 as people worthy of dignity and rights", then that  
 16 would be against the cultural norm of human respect and  
 17 the rights of the individuals and needs to be stopped,  
 18 and the Catholic church teachers that.  
 19 Q. I understand. Now I think I get where you're coming from.  
 20 You're looking at what the -- what Dan meant by that  
 21 statement as opposed to making that statement?  
 22 MS. MERSINO: Objection. That is a  
 23 mischaracterization of his testimony. You may answer.  
 24 MS. BARTOS: You need me to repeat?  
 25 THE WITNESS: I need you to repeat.

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1 being kicked out of a class because of that statement, with  
 2 no follow-up questioning, except that, that's enough to  
 3 violate a student's rights?  
 4 A. No -- I mean, excuse me, yes. Because if that student is  
 5 saying, just like Daniel was, that I don't accept homosexual  
 6 behavior because I find it morally offensive and it's  
 7 against my faith tradition, because my faith tradition says,  
 8 sexual behavior is between a man and a woman and the bond of  
 9 matrimony, that has to be protected. And that is part of  
 10 diversity and the teachers should have had a plan to deal  
 11 with that. I mean, that's critical.  
 12 Q. If you can, please accept the statement -- this is a  
 13 hypothetical.  
 14 Please accept the statement, "I don't accept  
 15 gays", as not meaning a sexual relation, marriage,  
 16 anything along those lines, but it's a bullying  
 17 statement, "I don't accept gays, I don't accept  
 18 Catholics, I don't accept Jews, I don't accept blacks".  
 19 Doesn't that invade the rights of others in the room  
 20 that you're sitting?  
 21 A. Again, you have to understand, if the question is "I don't  
 22 accept blacks" because I think that they lack human dignity  
 23 and human respect, the answer is yes, of course. That is  
 24 bullying and respect is one of the values of the Howell  
 25 school district and of all legitimate human culture.

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1 BY MS. BARTOS:  
 2 Q. I think I'm finally understanding where you're coming from.  
 3 Your evaluation of this case is depending  
 4 upon on what Dan meant by that statement as opposed to  
 5 simply making that statement?  
 6 A. Dan has a right to make that statement, if the statement, in  
 7 his understanding and mind, is my faith tradition teaches  
 8 that homosexual activity is sinful. I think that's what Dan  
 9 said he was saying, he couldn't -- it doesn't have the  
 10 language that I have, and I'm not -- you know, but he has to  
 11 be able to make those statements in a free society or we  
 12 will not be a free society.  
 13 Q. I take that as a yes?  
 14 MS. MERSINO: Objection --  
 15 BY MS. BARTOS:  
 16 Q. Am I correct in my understanding of your position?  
 17 A. I'm not sure.  
 18 MS. MERSINO: Objection. Vague.  
 19 MS. BARTOS: Perhaps we could take your  
 20 objection beforehand because I would care for you not to  
 21 interrupt the flow here.  
 22 Maybe the court reporter can read back  
 23 the question. I really need an answer to it.  
 24 (Whereupon the court reporter read back the  
 25 requested question.)